

CONCLUSION

(1) The provisions of Section 84308 do not apply to your position as city councilmember. Likewise, since the memberships of the redevelopment agency board and the community services district board are made up entirely and exclusively of the city councilmembers, Section 84308 does not apply to you when serving on those boards. However, because the LAFCO is a public entity made up of representatives of a variety of agencies, the prohibitions and requirements of Section 84308 do apply to its members.

(2) You may not accept, solicit or direct a contribution of \$250 or more for any campaign if the contributor is involved in a decision regarding a license, permit or other entitlement for use which is pending before the LAFCO and for three months following the date of the final decision. Simple disclosure and disqualification are not sufficient to meet this provision of Section 84308.

However, Section 84308 allows for receipt of a contribution so long as the contributor does not have an interest in a proceeding involving a license, permit, or other entitlement for use pending before the agency at the time of the contribution or during the preceding three months. Where a contribution of \$250 or more has been received prior to initiation of a proceeding before the LAFCO, both the public official and the contributor must publicly disclose the contribution. In addition, the public official must disqualify herself from participation in decisions for 12 months following the contribution.

FACTS

You are a member of the City of Cathedral City Council. As a member of the city council, you and all the other members of the city council also serve, ex officio, on the redevelopment agency board and the community services district board. In addition, you are a representative of the city council to the Riverside County LAFCO.

You are concerned about your responsibilities under Section 84308 relative to accepting campaign contributions for your reelection campaign to the city council.

ANALYSIS

Section 84308 covers campaign contributions and governmental decision-making by officials serving on appointive public agencies. This law applies to appointed board members,

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commissioners or other individuals who serve on state or local government agencies, as defined in Section 84308(a)(3), and who make decisions in proceedings which involve licenses, permits, or other entitlements for use.

In its definition of "agency", Section 84308(a)(3) specifies that "agency...does not include...local governmental agencies whose members are directly elected by the voters....However, this section applies to any person who is a member of an exempted agency but is acting as a voting member of another agency."

To further clarify, Regulation 18438.1(b) (copy enclosed) provides:

(b) The exemption for the officers of local governmental agencies who are directly elected by the voters applies only to agencies whose entire membership consists of officers directly elected by the voters to serve on that agency.

All of the members of the city council are directly elected by the voters. Thus, when the city council sits as a body, in its entirety, without additional members, the councilmembers are exempt from Section 84308. They are also exempt when they operate as the redevelopment agency or the community services district board because the entire membership of each of these boards consists solely of the members of the city council. (Regulation 18438.1(a); see also Hopkins Advice Letter, No. A-83-009, copy enclosed.)

However, when a member of the city council serves on a public agency, together with public officials representing a variety of other entities, she is acting as a member of a separate and distinct agency, comprised of individuals not directly elected to serve on that agency, and must comply with the restrictions of Section 84308. (See Strauss Advice Letter, No. A-83-008, copy enclosed.) Thus, because you are a LAFCO member, you are subject to the provisions of Section 84308.

When contributions are prohibited.

Section 84308(b) provides:

(b) No officer of an agency shall accept, solicit, or direct a contribution of two hundred fifty dollars (\$250) or more, from any party, or his or her agent, or from any participant, or his or her agent, while a proceeding involving a license, permit, or other entitlement for use is pending before the agency

and for three months following the date a final decision is rendered in the proceeding; provided, however, that the officer knows or has reason to know that the participant has a financial interest, as that term is used in Article 1 (commencing with Section 87100) of Chapter 7. This prohibition shall apply regardless of whether the officer accepts, solicits, or directs the contribution for himself or herself, or on behalf of any other officer, or on behalf of any candidate for office or on behalf of any committee.

Section 84308(a)(1) defines "party" to mean any person who files an application for, or is the subject of, a proceeding involving a license, permit, or other entitlement for use.

Section 84308(a)(2) defines "participant" to mean any person who is not a party but who actively supports or opposes a particular decision in a proceeding involving a license, permit, or other entitlement for use and who has a financial interest in the decision.

Regulation 18438.2(b) clarifies when a proceeding is "pending before" an agency:

(b) A proceeding involving a license, permit or other entitlement for use is "pending before" an agency:

(1) When the application has been filed, the proceeding has been commenced, or the issue has otherwise been submitted to the jurisdiction of an agency for its determination or other action;

(2) It is the type of proceeding where the officers of the agency are required by law to make a decision, or the matter has been otherwise submitted to the officers of the agency for their decision; and

(3) The decision of the officer or officers with respect to the proceeding will not be purely ministerial.

As you can see, the restrictions regarding contributions from persons with proceedings pending before the LAFCO are specific. Simple disclosure and disqualification are not sufficient for compliance with this provision of the Act. It is your responsibility to take reasonable steps to familiarize yourself with the names of persons who have proceedings

pending, or who have received a final decision on their issue within three months of a proposed contribution, or who have a demonstrated financial interest in any proceeding pending before the LAFCO which involves a license, permit or entitlement for use.^{3/} Should you accept, solicit or direct a contribution of \$250 or more from any such person to your own campaign, or any other campaign, you would be in violation of the Act.

Moreover, should any person give you a contribution of \$250 or more while a party to, or a participant in such a proceeding pending before the LAFCO, that person would also be in violation of the Act. (Section 84308(d).)

When disclosure and disqualification are required.

Section 84308(c) provides:

(c) Prior to rendering any decision in a proceeding involving a license, permit or other entitlement for use pending before an agency, each officer of the agency who received a contribution within the preceding 12 months in an amount of two hundred fifty dollars (\$250) or more from a party or from any participant shall disclose that fact on the record of the proceeding. No officer of an agency shall make, participate in making, or in any way attempt to use his or her official position to influence the decision in a proceeding involving a license, permit, or other entitlement for use pending before the agency if the officer has willfully or knowingly received a contribution in an amount of two hundred fifty dollars (\$250) or more within the preceding 12 months from a party or his or her agent, or from any participant, or his or her agent; provided, however, that the officer knows or has reason to know that the participant has a financial interest in the decision, as that term is described

^{3/} Section 84308(a)(5) defines "license, permit, or entitlement for use" to mean:

(5) "License, permit, or other entitlement for use" means all business, professional, trade and land use licenses and permits and all other entitlements for use, including all entitlements for land use, all contracts (other than competitively bid, labor, or personal employment contracts), and all franchises.

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with respect to public officials in Article 1
(commencing with Section 87100) of Chapter 7.

If an officer receives a contribution which would otherwise require disqualification under this section, returns the contribution within 30 days from the time he or she knows, or should have known, about the contribution and the proceeding involving a license, permit, or other entitlement for use, he or she shall be permitted to participate in the proceeding.

This provision of the law applies when a contribution is received from a supporter before that person submits an item for consideration by the public agency. In that situation it is not illegal to receive or to give a contribution. What is required is disclosure of the contribution on the record, and no participation in the decision.

For example, assume a person contributes \$500 to your campaign in January, submits an application for a permit in June, and the item is on the LAFCO agenda in September. Since the contribution was made prior to the initiation of the proceeding, there is no violation of Section 84308(b). However, because the contribution was made within twelve months of the issue coming before you, and it is a contribution of \$250 or more, you are required to disclose receipt of the contribution on the record, and to disqualify yourself from participation.

It is important to be aware that the contributor, under the example described above, must also disclose on the record of the proceeding the contribution made to you in January.
(Section 84308(d).)

If you feel the proceeding before the LAFCO is one in which you wish to participate, you may still be able to do so. Within 30 days of knowing of the contribution and the proceeding, you may return the payment (or the amount exceeding \$249) and, as a consequence, be permitted to participate in the proceeding.

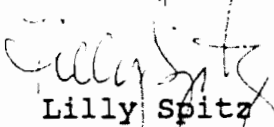
In summary, you may not accept, solicit or direct a contribution of \$250 or more from a contributor who is a party to or participant in a pending LAFCO decision until three months after the decision is final. If you have received a contribution of \$250 or more prior to initiation of the proceeding, you must (1) disclose the contribution and disqualify yourself from the LAFCO decision, or (2) return the contribution.

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I trust this has responded to the questions you have regarding application of the law to your situation. If I can be of further assistance in this area, please contact me at (916) 322-5901.

Sincerely,

Diane M. Griffiths
General Counsel


By: Lilly Spitz
Counsel, Legal Division

DMG:LS:plh
Enclosures



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COMMUNITY DEVELOPMENT 619/321-1531

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December 7, 1987

Ms. Kathy Donovan
Legal Division
Fair Political Practices Commission
428 "J" Street, Suite 800
Sacramento, California 95814

RE: Request for opinion on contributions of more than \$250 to Elected Council Members who also serve on LAFCO.

Dear Ms. Donovan:

This will confirm, and expand upon, my telephone conversation of December 2, 1987 with you.

The City Attorney of Cathedral City has advised me that, under the exemption provision of Government Code, Section 84308(a)(3), that specifies that "it does not include the courts or any agency in the Judicial Branch of Government, Local Government Agencies whose members are directly elected by the voters,...". I am a duly Elected Council Member of the City of Cathedral City, a General Law City. My primary concern at this point is regarding my allied position as a Local Governmental Representative on the Riverside County Local Agency Formation Commission (LAFCO).

Please confirm whether the City Attorney's information is correct regarding my positions, as well as my positions as a member of the Redevelopment Agency Board and the Community Services District Board, solely by virtue of being a member of the Council.

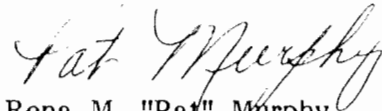
The Campaign Contribution Limitation of Government Code Section 84308(a)(6) does not apply to me, since I am serving as a member of the Elected City Council, either sitting as itself, or as the Ex-Officio Governing Body of another agency, such as the Redevelopment or Community Services Agencies. The City Attorney relies upon Regulation 18438, as I understand.

I also serve as the representative of local units of government on Riverside County LAFCO. I understand I cannot accept a contribution of \$250.00 or more from any person or entity which now has a matter pending before that body, and If I accept a contribution of \$250.00 or more from anyone, I could not then act as a member of the LAFCO Board on any matter affecting any such contributor for at least twelve months thereafter. I would also be required to make a disclosure of that contribution on the public record of the meeting as well.

However, as I understand it, I can properly accept a contribution to my campaign for the City Council, in excess of \$250.00, so long as I disqualify my such LAFCO matters, refrain from attempting to influence any such decision, and disclose the contribution on the record of the proceeding.

Would you kindly confirm whether my understanding is correct?

Very truly yours,

A handwritten signature in cursive script, appearing to read "Pat Murphy".

Rena M. "Pat" Murphy
Mayor Pro Tem

RMPPM:dbw